

REMARKS

Claims 1-2, 4, 8-9, 11-14 and 21 were pending in this application. The preambles of claims 1 and 21 have been amended to limit the invention for use with a portable propane tank, which is a subset of a pressurized cylinder. Claim 8 has been amended for antecedent basis purposes. Additionally, claims 1 and 21 have been amended to positively recite the interaction of the portable propane tank (e.g., accessibility to the valve connection) and the opening formed by the flaps. Support for this amendment is found in Paragraph [0028] and in FIGS. 8. Claim 21 has also been amended to require the side flaps to be substantially parallel to the side portions when in an open position. Support for this limitation is found in FIGS. 7, 10, and 11, for example. Withdrawn claims 3, 5-6, 10 and 22 have now been cancelled. Claim 4 has been cancelled. No new claims have been added. Accordingly, claims 1-2, 8-9, 11-14 and 21 are still pending in this application.

35 U.S.C. §103 Rejections

Claims 1-2, 4, 8-9, 11-14 and 21 continue to stand rejected under 35 U.S.C. §103(a) for obviousness based upon United States Patent No. 4,905,855 to Troiano et al. (hereinafter "Troiano") in view of United States Patent No. 1,873,690 to Ward, and further in view of United States Patent No. 6,929,142 to Gilbert et al. (hereinafter "Gilbert") and, where applicable, a combination of one or more of United States Patent No. 5,263,727 to Libit et al. and United States Patent No. 4,767,139 to Hansing.

Specifically, the Examiner states that Gilbert "shows a flap structure with a pair of side flaps pivotally connected to a closed position where the center of the container is only partially covered." The Examiner maintains that it would have been obvious to one having ordinary skill in the art to incorporate the pair of side flaps, as taught by Gilbert, to the inventions taught by Troiano and Ward. Applicant has previously pointed out that Gilbert does not disclose analogous art and is, therefore, improper prior art for purposes of the instant rejection. Gilbert has nothing to do with securing anything placed within a container – Gilbert merely discloses an access latch for use with a storage tank sized to accommodate an inspection vehicle.

In response to Applicant's previous arguments, the Examiner asserted that although Gilbert may not be analogous art, if a prior art reference is reasonably pertinent to the particular problem with which the inventor was concerned, then such a prior art reference may still be relied upon as a basis for rejection (*In re Oetiker*, 997 F.2d 1443 (Fed. Cir. 1992)). The Examiner then concluded that the teachings of Gilbert (i.e., hinged flap structure) are pertinent to solving the problem of providing a structure that covers the top of a container, while allowing for a partial opening in the top of the container. Applicant respectfully disagrees with the Examiner.

Specifically, it has been held that a "reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, *logically would have commended itself to an inventor's attention in considering his problem.*"(emphasis added) (*Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993)). An inventor attempting to find a suitable flap for use with a carrier for securing a portable propane tank would not have looked to the art pertaining to large, fixed storage tanks, as disclosed in Gilbert. Rather, an inventor would have looked to the art of portable containers in which the opening of the container is suited for receiving therethrough a portion of the object within the container, while holding the object therein. Gilbert in no way addresses this problem and does not disclose the requisite teaching, suggestion or motivation for an inventor to use a hinged flap arrangement with an opening to expose the valve in the context of a carrier for securing a portable propane tank. The opening of the hinged flap arrangement in Gilbert simply allows an umbilical cord to pass into the storage tank to an inspection vehicle situated therein. Gilbert's hinged flaps in no way are designed to also secure an object within the container, as in the present invention. Therefore, it cannot be reasonably argued that Gilbert logically would have commended itself to an inventor's attention, since Gilbert is in no way concerned with the problem addressed by the present invention. Hence, Gilbert is neither analogous nor reasonably pertinent prior art for the basis of forming a rejection of the claimed subject matter.

Applicant has nonetheless further amended his claims and also hereby submits a Declaration signed by the inventor, Daniel K. Gibby, attesting to the fact that as an experienced roofer Mr. Gibby does not view Gilbert as containing any suggestion or motivation for one skilled in the art to utilize the teachings of Gilbert in the context of a carrier for securing a portable propane tank.

Specifically, Gilbert discloses a metal free-floating roof adapted to sit on top of a silo container. The free-floating roof's purpose is to contain emissions emanating from the material stored within the silo container and therefore must be constantly closed when no maintenance of the silo container occurs. Additionally, the roof must be fully covering the silo container top opening. In contrast, the side flaps of the present invention can be in an open position at any time and are specifically designed to define a partial opening when in a closed position. Therefore, the concept of having side flaps in a closed position but with a constantly open partial opening is not taught or suggested in Gilbert. Gilbert thus motivates against using any teachings therein with respect to the carrier of the present invention.

As further stated in the Gibby Declaration, Gilbert also discloses a hinge mechanism which is placed around the silo container top opening that would not be practical for use in the present invention, as now claimed. As shown in FIG. 9 of Gilbert, the hinges are secured to an area of the top of the silo container that is inward of and not at the periphery of the edge of the top of the silo container. Accordingly, in a fully open position, the hinged roof portions cannot be positioned such that they are flush or substantially parallel with respect to the opposing sides of the silo container. Therefore, in an open position, the roof portions extend substantially laterally from the silo container. As shown in FIG. 7-11, this is in contrast to the present invention now claimed, where the side flaps assume flush or substantially parallel positions with respect to the sides of the container when in their open position. This flush position is conducive to minimizing the area used by the container, avoiding injury from the side flaps (if they were rather extending outwardly), and securement of a strap (e.g., seatbelt) through the securing holes of the container (See FIG. 10). The aforementioned advantages could not be realized if the flap teachings including the hinge mechanism placement teachings of Gilbert were to be applied to the present invention.

Response Under 37 CFR 1.116
Expedited Procedure
Examining Group 3600
Application No. 10/705,536
Paper Dated: October 30, 2006
In Reply to Final Office Action of May 3, 2006
Attorney Docket No. 4263-031577

Accordingly, (1) Gilbert would not logically have commended itself to an inventor's attention in considering the problem of securing a portable propane tank within the container while providing a partial opening; and (2) although a flap structure is a common everyday mechanical concept, there is no teaching or suggestion as to why use of the flap structure of Gilbert with the claimed carrier of the present invention would be considered obvious.

CONCLUSION

Based on the foregoing remarks, reconsideration of the rejections and allowance of pending claims 1-2, 8-9, 11-14 and 21 are respectfully requested.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/705,536 Confirmation No: 5139
Applicant : Daniel K. Gibby
Filed : November 10, 2003
Title : Carrier for Gas and Liquid Cylinders
Art Unit : 3618
Examiner : Brian L. Swenson
Customer No. : 28289

Mail Stop RCE
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF DANIEL K. GIBBY

I, Daniel K. Gibby, declare as follows:

1. I am the inventor of the subject matter claimed in United States Patent Application No. 10/705,536, filed November 10, 2003, and entitled "Carrier for Gas and Liquid Cylinders."

2. I also have 19 years of roofing experience during which time I have worked on a variety of roofs, either in repair or installation applications. I thus have an understanding of the teachings in United States Patent No. 6,929,142 to Gilbert et al. (hereinafter "the Gilbert patent").

3. After review of the Gilbert patent, I do not view Gilbert as containing any suggestion or motivation for one skilled in the art of carriers for portable propane tanks to utilize the teachings of the Gilbert patent in the context of a carrier according to the present invention. I make this statement based on the fact that:

(a) The Gilbert patent discloses a metal free-floating roof adapted to sit on top of a silo container. The free-floating roof's purpose is to contain emissions emanating from the material stored within the silo container and therefore must be constantly closed when no maintenance of the silo container occurs. Additionally, the roof must be fully covering the silo container top opening. In contrast, the side flaps of the present invention

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can be in an open position at any time and are specifically designed to define a partially opening when in a closed position. Therefore, the concept of having side flaps in a closed position but with a constantly open partial opening is completely contrary to and, therefore, not taught or suggested in the Gilbert patent. The hatch in the Gilbert patent would simply not work if incorporated into the present invention, because it is not designed to provide a partial opening while at the same time securing an object in place within a portable container; and

(b) The Gilbert patent discloses a hinge mechanism which is placed around the silo container top opening in a manner that would not be practical for use in the present invention. As shown in FIG. 9 of the Gilbert patent, the hinges are secured to an area of the top of the silo container that is inward of and not at the periphery of the edge of the top of the silo container. Accordingly, in a fully open position, the hinged roof portions cannot be positioned such that they are flush or substantially parallel with respect to the opposing sides of the silo container. Therefore, in an open position, the roof portions extend substantially laterally from the silo container. As shown in FIG. 7-11, this is in contrast to the present invention where the side flaps assume flush or substantially parallel positions with respect to the sides of the container when in their open position. This flush position is conducive to minimizing the area used by the container, avoiding injury from the side flaps (if they were rather extending outwardly), and securement of a strap (e.g., seatbelt) through the securing holes of the container (See FIG. 10). The aforementioned advantages could not be realized if the flap teachings including the hinge mechanism placement teachings of Gilbert were to be applied to the present invention.

I swear under penalty of perjury that the foregoing is true to the best of my knowledge, information and belief.

Date 10-25-06

By Daniel K. Gibby
Daniel K. Gibby